

Title 16. Respiratory Care Board
Department of Consumer Affairs
[Citation & Fine - Unlicensed Personnel]

FINAL STATEMENT OF REASONS
ADDENDUM

UPDATED INFORMATION:

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

The Respiratory Care Board of California (RCB) adds the following information to the rulemaking record to further define and explain the proposals:

Subdivision (a) of section 1399.391 provides:

- The “executive officer or his or her designee is authorized” to issue citations. This provides consistency with similar language in section 1399.380 of the California Code of Regulations (CCR) which provides the “executive officer of the board or his or her designee is authorized” to issue citations to persons who hold a license.
- Citations may be issued to “any person, or employer of a person, who acts in the capacity of or engages in the business of a respiratory care practitioner in this state without having a license in good standing pursuant to the Act and who is not otherwise exempted from the provisions of the Act.” Sections 3766 and 3767 of the Business and Professions Code (B&P) make the practice of respiratory care by unlicensed personnel or employing such personnel a violation, subject to a citation and fine. Sections 3762 and 3765 of the B&P provide for exemptions from the “Act.”
- “Each citation for unlicensed activity shall contain an order of abatement, and shall be in writing and state with particularity the basis of the citation. ” This is required pursuant to subdivision (b) of section 3767 of the B&P.
- A definition for “employer.” This definition is to provide clarity.

Subdivision (b) of section 1399.391 provides that “an administrative fine shall be paid within the time period designated in the citation, not to exceed 365 days. The amount of an administrative fine shall be separate from section 1399.381 and in accordance with section 3767(b)(2) of the B&P.” The 365 day time period was selected for consistency with the 1 year, 12 month, and 365 day time frames provided for other cost statutes and regulations. Subdivision (d)(2) of section 3753.5 of the B&P provides a maximum of 1-year time frame for repayment of investigative and prosecution costs. The RCB’s disciplinary guidelines, adopted pursuant to section 1399.374 of the CCR, provide for a 12-month time-frame for “cost recovery.” Subdivision (c) of section 1399.380 of the CCR provides for a maximum time-frame of 365 days to pay a fine ordered as a result of a citation and fine issued against a license holder. The fine amount is provided for in section 3767 of the B&P.

Subdivision (c) of section 1399.391 provides:

- A citation shall inform a person of his/her right to a hearing and that such a request shall be made within 15 days. This is required pursuant to subdivisions (b)(1) and (c) of section 3767 of the B&P. In addition, the 15-day time frame is consistent with the Administrative Procedures Act (APA) wherein a request for a hearing must be made within 15 days (i.e. subdivision (b) of section 11505).
- A citation shall be served upon the individual or employer by certified mail. This is done to reasonably ensure the cited person receives the citation and is consistent with the APA (i.e. subdivision (c) of section 11505).

Subdivision (d) of section 1399.391 provides consideration shall be given to various factors in assessing an administrative fine. Some of these factors are also noted in subdivision (f) of section 3767 of the B&P. These factors are also consistent with the factors identified in subdivision (f) of section 1399.380 of the CCR for citing and fining a licensed holder.

Subdivision (e) of section 1399.391 provides a “cited person or employer who wishes to contest the citation may serve a written appeal on the board within 15 calendar days after service of the citation, through the United States Postal Service by certified or registered mail.” Subdivisions (c) and (d) of section 3767 of the B&P, requires notice to be made within 15 days. The requirement to provide the appeal in writing and by certified or registered mail gives assurance to both the cited party and the RCB of the date the appeal was made and that an appeal was in fact made. Section 11506 of the APA also requires notices of defense to be made in writing.

Subdivision (f) of section 1399.391 provides:

- The board shall afford an opportunity for a hearing if the cited party appeals the citation. This is required pursuant to subdivision (e)(1) of section 3767 of the B&P.
- The board shall “issue a decision based on findings of fact, affirming, modifying or vacating the citation with its fine or order of abatement, or directing other appropriate relief” after a hearing. This is required pursuant to subdivision (e)(2) of section 3767 of the B&P. “With its fine” was added to the regulatory language for clarity to ensure “affirming, modifying or vacating the citation” also included the fine amount.
- The proceedings for a hearing shall be conducted in accordance with the APA. The APA provides standard procedures for hearings.

Subdivision (g) of section 1399.391 provides the failure of the cited party to appear at a scheduled hearing “shall be deemed a withdrawal of the appeal, and the citation shall constitute a final order of the board and shall not be subject to further administrative review.” Failure of the cited party to appear at a scheduled hearing, that was requested by the cited party as an “appeal,” will be treated the same as if an appeal was not made as provided for in subdivision (d) of section 3767. This language also provides consistency with subdivision (d) of section 1399.382 of the CCR which provides for the same outcome for failure to appear at a hearing for a citation issued to a license holder.